

DISTRICT OF MAINE

Docket No. 01-14-P-DMC

damages, *id.* at 2, and invokes this court’s diversity jurisdiction, alleging that the plaintiff is a resident of Maine while the defendants are residents of New Hampshire, *id.* at 3.

The only possible basis for this court to exercise jurisdiction over these state-law claims is provided by 28 U.S.C. § 1332(a), which provides such jurisdiction when the matter in controversy exceeds \$75,000 and is between citizens of different states. The defendants contend that this diversity jurisdiction is not present in this case because the plaintiff brings claims only in a representative capacity on behalf of her incompetent son, who is a resident of New Hampshire, as the complaint alleges the defendants are as well. Defendants’ Motion to Dismiss for Lack of Subject Matter Jurisdiction, etc. (“Motion”) (Docket No. 7) at 2-3. A subsequent section of the diversity jurisdiction statute provides:

For the purposes of this section . . . —
* * *

(2) the legal representative of . . . an infant or incompetent shall
be deemed to be a citizen only of the same State as the infant or incompetent.

28 U.S.C. § 1332(c)(2). The plaintiff responds that she is the “sole plaintiff” in this action and “only legally represent[s]” herself. Plaintiffs [sic] Respo[n]se to Defendants [sic] Motion to Dismiss for Lack of Subject Matter Jurisdiction, etc. (Docket No. 8) at 1. However, she also states that she is “a legal representative of Aaron W. Brown’s person, but I am also Aaron W. Brown in the eyes of the law, stand in the shoes of.” *Id.* at 2.

The plaintiff’s second observation is correct. Her complaint cannot be fairly read to assert any claims other than those that could only be raised by Aaron W. Brown himself, were he legally competent to do so. Because she raises only Brown’s claims, the plaintiff brings this action only as his legal representative, and section 1332(c) accordingly requires that she be deemed a citizen of the same state as Brown for purposes of diversity jurisdiction. The defendants have attached to their motion copies of certain pages of the deposition of the plaintiff in which she testifies that Brown

resides in New Hampshire and has done so since some time in 1999. Deposition of Shari J. Edwards (excerpts attached to Motion) at 8-10. This action was filed in January 2001. Docket.

The statute and the plaintiff's own testimony are dispositive. The plaintiff must be deemed to be a resident of New Hampshire under the circumstances of this action, and diversity of citizenship therefore is lacking. As a result, this court lacks jurisdiction over the subject matter of the complaint and the action must be dismissed.

Dated this 17th day of September, 2001.

David M. Cohen
United States Magistrate Judge

SHARI J EDWARDS, SHARI J. SHARI J EDWARDS
EDWARDS, as Conservator and [PRO SE]
Guardian for Aaron W. Brown P.O. BOX 171
 plaintiff MECHANIC FALLS, ME 04256
 207-998-5572

v.

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defendant 775-5831
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